(c) that he does not know the name of any person occupying the land who is not named in the summons.

It is pertinent to point out that O. 89 of the RHC resembles that of the English O. 113 RSC.

Encik M. Govindarajoo submits on behalf of the defendants that the present case is not a case of trespassing simpliciter but rather a case of the defendants being bestowed with TOLs and, consequently, O. 89 of the RHC could not be applied. He argues further that there are triable issues to be decided upon and it follows therefore that O. 89 of the RHC has no application at all.

Encik Kamaluddin Maamor, Counsel for the plaintiff, argues quite forcefully to the contrary.

It seems that the matter has been resolved in the recent Supreme Court case of *Bohari bin Taib & Ors. v. Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343 SC where triable issues existed and therefore the Supreme Court held that it could not appropriately be dealt with and decided upon by affidavit evidence to evict occupiers by order of possession under O. 89 of the RHC. But the facts in the present case are entirely different. Both parties agreed that the matter could be dealt with by way of affidavit evidence. It is also not disputed that the defendants held expired TOLs and remained on the said land that had been alienated to the plaintiff on 24 July 1989 notwithstanding the eviction notices issued to them. Under our Torrens System the register is everything. Upon registration, the party in whose favour the registration has been effected will obtain an indefeasible title to or interest in the land (s. 340(1) of the National Land Code), that is, a title or an interest which is free of all adverse claims or encumbrances not noted on the register. I might as well mention that registration under the National Land Code is effected when a prescribed memorial of the dealing is made on the register document of title under the hand and seal of the registering authority (*Mohammad bin Buyong v. Pemungut Hasil Tanah, Gombak & Ors.* [1982] 2 MLJ 53). In my judgment, O. 89 of the RHC applies in the present case and the plaintiff is entitled to recover possession against the defendants forthwith. There is no provision for time. It is up to the plaintiff to give such time as it thinks fit. Costs should rightly go to the plaintiff. I certify in writing that no further argument is required (O. 56 r. 2(2) of the RHC).

MALAYAN BANKING BERHAD

v.

SIONG ELECTRONIC INDUSTRIES (1981) SDN. BHD. & 11 ORS.

HIGH COURT, KUALA LUMPUR
DATO' DR. ZAKARIA BIN MOHD YATIM J.
[CODE NO. D4-22-169-1992]
28 JANUARY 1994

PRACTICE AND PROCEDURE: Amendment to O. 32 r. 13 Rules of the High Court 1980 - 14-day time frame for filing of affidavits - Effect on pre-amendment O. 14 application - Whether amendment applied retrospectively.

INTERPRETATION: Section 30 Interpretation Acts 1948 and 1967 - Whether concerned with matters of procedures or of a substantive kind.

On 24 September 1992 the plaintiff filed an application for summary judgment against the defendant and a supporting affidavit for that application was filed on the same day. Subsequently two further affidavits were filed by the plaintiff on 7 September 1992 and 13 November 1992 respectively. An amendment to O. 32 r. 13 Rules of the High Court had subsequently been effected and on 1 August 1993 the said amendment came into force. The amendment introduced a new sub-rule to the Rule 13 and in effect provided first, that an affidavit intended to be used in support of an application must be filed and served within fourteen days after the filing of the application and secondly, any affidavit in reply to such affidavit must likewise be filed and served within fourteen days after the replying party had been served with such affidavit.

On 8 September 1993, about five weeks after the coming into force of the amendment, the plaintiff filed its fourth affidavit (enclosure 16) and on 15 September 1993 the defendants filed their affidavit in reply (enclosure 17) and served it on the plaintiff on that same day. At the hearing of the application on 16 September 1993, the Deputy Registrar drew the Court's attention to the aforesaid amendment and an issue thus arose whether the said amendment applied to enclosures 16 and 17 herein and hence whether the said enclosures could be considered by the Court for the purpose of the present application.

Held:

The Court relying on the principles laid down in *Yrittiaho v. The Public Curator of Queensland* where the High Court of Australia considered s. 20(1)(c) and (d) of the Interpretation Acts 1954 to 1962 of Queensland (which is similar to s. 30(1)(b) and (d) of our Interpretation Act) which held *inter alia* that s. 20(1)(c) thereof did not refer to rights of a procedural kind, went on to hold the following:

[1] The rule is that if the amending statute had the effect of altering a substantive law or removing a substantive right, it should not be construed retrospectively. On the other hand, if the amendment is purely procedural and does not affect any right that existed before the amendment, the amendment ought to be construed retrospectively.

[2] The amendment to O. 32 r. 13 herein does not affect any vested right of the plaintiff. The plaintiff's right to prosecute its claim against the defendants for the amount stated in the statement of claim is not in any way affected. The plaintiff's right to apply for summary judgment against the defendants is also not affected. The amendment is purely procedural in nature and there is no indication that it is not intended to apply retrospectively. In the premises the amendment must be construed as retrospective.

[3] Section 30(1)(b) and (d) of the Interpretation Acts 1948 and 1967 (consolidated and revised in 1989) does not apply to the present case as the section is not concerned with matters of procedure but only with rights of a substantive kind. Since the right of the plaintiff in respect of the present proceeding is not affected by the amendment under s. 30(1), the proceeding herein cannot continue as if the amendment had not been made. This section therefore is not a basis for saying that the amendment cannot apply retrospectively and hence the contention of the defendants that the affidavits filed in enclosures 16 and 17 were not affected by the amendment cannot be sustained.

[Amendment to O. 32 r. 13 applied retrospectively. Enclosures 16 and 17 disregarded for the present application].

Cases referred to:
Singer v. Hasson [1884] 50 LT 326 ***(foll)***
James Gardner v. Edward A Lucas [1878] 3 App Cas. 582 HL ***(refd)***
Bonning v. Dodley [1982] 1 WLR 279 ***(dist)***
In re Athlumney Ex parte Wilson [1898] 2 QB 547 ***(dist)***
Carson v. Carson [1964] 1 WLR 511 ***(refd)***
Yrttiaho v. The Public Curator of Queensland [1971] 125 CLR 228 ***(foll)***
Wright v. Hale (3 L.T. Rep. xi S. 444)
Madden v. Madden [1974] 1 WLR 247 ***(cit)***
Lee Chow Meng v. Public Prosecutor [1978] 2 MLJ 36 ***(refd)***
Public Prosecutor v. Hun Peng Kai & Ors. [1984] 2 CLJ 290 ***(refd)***
Public Prosecutor v. Datuk Haji Harun bin Haji Idris [1977] 1 MLJ 14 ***(cit)***

Legislation referred to:
Courts of Judicature Act 1964, s. 17
Interpretation Acts 1948 & 1967, ss. 3, 30(1)(b)(d)
Rules of the High Court 1980, O. 3 r. 5, O. 14, O. 3 r. 5, O. 32 r. 13
Interpretation Acts 1954 to 1962, s. 20(1), (c) (d) and (e) (Queensland) (Australia)
Rules of the Supreme Court, O. 90 r. 9 (Queensland) (Australia)
Bankruptcy Act 1890, s. 23 (UK)
Conveyancing (Scotland) Act 1874, ss. 38 & 39 (UK)
Matrimonial Causes Act 1963, s. 3 (UK)
Matrimonial Proceedings & Property Act 1970, s. 7(4) (UK)
Patents, Designs and Trade Marks Act 1883, s. 19 (UK)

Other sources referred to:
Halsbury's Laws of England, 4th Edn., Vol. 44, paragraph 925
Interpretation of Statutes 1962, Maxwell, 11th Edn., pp. 204-205
Statutory Interpretation, FAR Bennion, 2nd Edn. pp. 218-219

For the plaintiff - B. Oleary, M/s. Skrine & Co.
For the defendant - Francis Lim; M/s. Francis Lim & Co.

JUDGMENT

Dr. Zakaria Bin Mohd Yatim J:

This is an application by the plaintiff for an order that summary judgment be entered against the defendants.

At the hearing of the application on 16 September 1993, Miss B. Oleary, Counsel for the plaintiff objected to the defendant's affidavit filed on 15 September 1993 (enclosure 17). She said that it was served on the plaintiff's solicitors only on the afternoon of 15 September 1993. According to her the plaintiff's fourth affidavit (enclosure 16) was filed on 8 September 1993.

At this stage the Deputy Registrar, Puan Sabariah bt. Atan, who was present at the hearing drew my attention to the amendment to

O. 32 r. 13 of the Rules of the High Court. I had a look at the amendment and decided to hear whether enclosures 16 and 17 were affected by the amendment since the application for summary judgment was filed on 24 April 1992. Both Miss Oleary and Mr Francis Lim, who was Counsel for the defendant requested for time to do research on the matter.

At the resumed hearing both Counsel were prepared to argue on the amendment *vis-a-vis* enclosures 16 and 17. The amendment to Order 32 Rule 13 was made by adding a new sub-rule to the Rule 13. Sub-rule 2 reads as follows:

(2) Save as otherwise provided in these rules -

(a) an affidavit intended to be used in support of an application must be filed and served on the other party within 14 days from the date of the filing of the application; and

(b) a party wishing to reply an affidavit served on him must file his affidavit and serve it on the other party within 14 days from the date on which the affidavit he intends to reply was served on him.

Miss B. Oleary said that the application for summary judgment was filed before the amendment was made. She submitted that affidavits filed after the amendment were not affected by the amendment. She referred to s. 30 of the Interpretation Acts 1948 & 1967 (consolidated and revised in 1989), and contended that the amendment did not apply retrospectively. She said, "If Parliament intended it to be retrospective it should state in clear terms." She submitted a list of authorities for me to consider namely, Maxwell on the **Interpretation of Statutes**, 1962 11th Edn., pp. 204-205: **Halsbury's Laws of England**, 4th Edn. Vol.44 paragraph 925; FAR Bennion, **Statutory Interpretation**, 2nd Edn. pp. 218-219; *Singer v. Hasson* [1884] 50 LT 326; *James Gardner v. Edward A L*ucas [1878] 3 App Cas. 582 HL; *Bonnina v. Dodley* [1982] 1 WLR 279. *In re Athlumney Ex parte Wilson* [1898] 2 QB 547; and *Carson v Carson* [1964] 1 WLR 511. Miss B. Oleary said that if the Court was of the view that the amendment applied retrospectively, she would ask for leave of the Court to abridge time under O. 3 r. 5.

Mr. Francis Lim on the other hand submitted that the amendment had a retrospective effect. He said that the amendment was procedural in character and therefore it was not governed by s. 30 of the Interpretation Act. In support of his submission he cited a decision of the High Court of Australia in *Yrttiaho v. The Public Curator of Queensland* [1971] 125 CLR 228. With regard to the question of abridgement of time under O. 3, r. 5, he said that this would be a matter of separate application.

I shall first consider the cases cited by Miss Oleary. The first of case is *Singer v. Hasson*. In that case the plaintiff brought an action for patent infringement before the Patents, Designs and Trade Marks Act 1883 came into force. The defence contended that the patent was not novel and was therefore bad. The plaintiff thereupon applied under s. 19 of the new Act for liberty to apply to the patent office for leave to amend his specification by way of disclaimer by striking out the parts that were not novel. Field J. granted the application in chambers. The defendants appealed. Day J. said that s. 19 was a mere matter of procedure and dismissed the appeal. Smith J. was also of the view that s. 19 did not deal with anything more than procedure. He applied the rule laid down by Wilde B in *Wright v. Hale* (3 LT Rep. xi S. 444). In that case Wilde B said, "where the enactment deals with procedure only, unless the contrary is expressed, the enactment applies to all actions, whether commenced before or after the passing of the Act." Smith J. said that he had read s. 19 carefully and he could not find any such contrary expression.

In my view *Singer v. Hasson* supports Mr. Francis Lim's argument and not that of Miss. Oleary.

The next case cited by Miss Oleary is *James Gardner v. Edward A Lucas*. In that case, the House of Lords decided that ss. 38 & 39 of the Conyeyancing (Scotland) Act 1874, which dispensed with several requirements essential to the validity of writs in Scotland under previous statutes were not retrospective, and could not remedy the defects in a deed executed before 1874 which was void under the Act of 1696. Lord Blackburn in his speech at page 603, said that s. 39 did not indicate clearly whether it was intended to be retrospective. He then proceeded to construe the act according to the legal rules of construction. His conclusion was that the *prima facie*

construction of the Act was that it was not to be retrospective. His ground for saying that s. 39 was not retrospective was that if it were retrospective it would have the effect of making that a valid contract which, as the law stood at the time it was executed, not valid at all.

The next case is *Bonning v. Dodsley* [1982] 1 WLR 279. In that case the Court had to consider whether s. 7(4) of the Matrimonial Proceedings & Property Act 1970 had a retrospective effect. s. 7(4) of the Act provided:

> If after the grant of a decree dissolving or annulling a marriage either party to that marriage remarries, that party shall not be entitled to apply for an order under s. 2 or 4 of this Act against the person to whom he or she was married immediately before the grant of that decree ...

In that case the parties were married in 1954 and the husband obtained a divorce in 1964. The wife did not apply for financial provision but the parties made an agreement which was to provide income for her and involve rearrangement of their shareholdings in a company formerly belonged to her father. The wife remarried in 1966. The husband sold his interest in the company in 1975 for a large sum. She suffered financial hardship and on 20 January 1981 she served notice to her former husband of her intention to apply for ancillary relief. The husband applied to strike out the application for want of jurisdiction. Sir John Arnold P. dismissed the husband's application holding that s. 7(4) was not retroactive in its effect. In arriving at his decision, Sir Arnold P. followed the decision in *Madden v. Madden* [1974] 1 WLR 247. The husband appealed. The Court of Appeal upheld the decision of Sir John Arnold P. Ormrod LJ, in his judgment at page 283 said that the right course was to apply the principle relied on by Sterling J. in *Madden v. Madden*.

In *Madden v. Madden*, the question, before Sterling J. was whether s. 7(4) of the same Act was intended to have a retroactive effect. The learned Judge said that if the Section was intended to have a retrospective effect the result would be that the husband lost a right which he had up to 1 January 1971 whereas the wife acquired rights which hitherto she did not have. The learned Judge went on to state that "there would be a manifest injustice to this husband if the prohibition on his right to vary, which is in my view the **removal of a substantive and not a procedural right**, has to be treated retrospectively ... [Emphasis added]

It is clear that the Court of Appeal, in *Bonning v. Dodsley*, was dealing with the question of substantive right and not a question of procedure when it considered s. 7(4) of the Act.

The next case is *Ex parte Wilson*. In that case the question before the Court was whether s. 23 of the Bankruptcy Act 1890 which came into operation on 1 January 1891 applied retrospectively. Section 23 provided that where a debt, including interest had been proved on a debtor's estate such interest would for the purposes of dividend be calculated at a rate not exceeding 5% per annum, without prejudice to the right of the creditor to receive out of the estate any higher rate of interest to which he might be entitled after all the debts had been paid in full. The facts were that on 31 January 1890 a receiving order was made against the debtor. At the meeting of the creditors a scheme of arrangement was agreed upon. On 25 June 1890 the scheme was approved by the Court and the receiving order was rescinded. One creditor, Mr. Morris tendered his proof which was sworn on 2 April 1890 claiming the sum of £10,153 1s. 8d., a large part of the debt was for interest at a rate exceeding 5% per annum. The trustee was advised that s. 23 was retrospective in operation. Mr. Wilson to whom the debt was assigned by Mr. Morris, applied to the Court for a declaration that he was entitled, as assignee, to payment of all dividends already declared on the full amount of the claim. The Court decided that s. 23 was not retrospective in its operation and therefore did not apply to a debt, including interest above 5% proved under a scheme adopted by the Court before the date of the passing of the Act. Wright J. in his judgment at page 552 stated the rule of construction in the following words:

> that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.

At page 553, the learned Judge went on to state:

> If the section is construed retrospectively, it will postpone the creditor's right to dividend beyond 5 percent, and will *pro tanto* deprive him of the vested right of action which he possessed at the commencement of the Act and when the bankruptcy occurred."

The last case cited by Miss. B. Oleary is *Carson v. Carson*. In that case the Court decided that s. 3 of the Matrimonial Causes Act 1963, did not apply retrospectively, as that section effected an alteration in substantive law. In his judgment at page 518, Scarman J. said:

> It is a section which has effected an alteration in the substantive law. It seems to me to be plain, therefore, that unless Parliament expressly or by clear implication makes such a section retrospective, it will not be retrospective so as to interfere with rights that have accrued prior to the passing of the Act.
>
> I think, therefore, that the correct approach in the present case is to see when the conduct occurred which is alleged to have revived the adultery. It is conduct which upon my finding of the facts occurred in the year 1962. That being so, the husband had in my judgment an accrued right to divorce the wife upon the ground of the adultery which he had condoned but which was then revived. Then a year later came the passing of the Act. There is nothing in the language of the section, nothing in the statute read as a whole, which compels me to the view that Parliament, by s. 3, intended to interfere with that accrued right.

I shall now consider *Yrttiaho v. The Public Curator of Oueensland*, which was cited by Mr. Francis Lim. In that case the plaintiff commenced an action in the Supreme Court of Queensland against George Copely and Alfred Smith claiming damages for injuries alleged to have been caused by their negligence. On 24 June 1963 the defendants entered appearance. Both defendants died on 20 October 1964 and 13 August 1966 respectively. On 12 February 1966, O. 90 r. 9 of the Rules of the Supreme Court of Queensland was amended. Before the amendment the rule provided that if no further action was taken for a period of six years no fresh proceeding should be taken without the leave of the Court. The amendment, however, reduced the period of six years to three years. On 15 August 1967 the plaintiff applied for leave to deliver a statement of claim. Under the amendment, the period of three years had elapsed from the time when the last proceeding in the action was taken. On 13 December 1968 while the application was pending, it was ordered that the Public Curator of Queensland, as the executor and trustee of the wills of the defendants be made a party to the action. On 4 June 1970 leave to deliver a statement of claim was refused by Scarman J. The plaintiff appealed to the Supreme Court of Queensland. His appeal was dismissed. He then appealed to the High Court. The High Court considered s. 20(1)(c) and (d) of the interpretation Acts 1954 to 1962 of Queensland [which is similar to s. 30(1)(b)(d) of our Interpretation Act] and decided that s. 20 did not apply to that case. Gibb J. in his judgment at pages 244 and 245 said that s. 20(1)(c) did not refer "to rights of a procedural kind, such as a right to take fresh step in a pending proceeding." Menzies J. said at page 235, that O. 90 r. 9 did not affect a "right, or privilege created, ... established or exercisable" as stated in s. 20(1)(c).

With regard to s. 20(1)(e), Gibbs J. said that it referred to the legal proceeding and remedy themselves, "and that the section does not reveal an intention to reverse the established rule of the common law that a mere procedural statute is in the absence of an indication to the contrary to be construed as retrospective." The Court decided that the amendment to O. 90 r. 9 was purely procedural in nature. The Court also held that "the amendment did not impair the appellant's right or bar his cause of action."

After considering the cases cited by Miss. Oleary, it appears that all the cases, except *Singer v. Hasson*, laid down the following principles.

An amending statute could not be construed retrospectively if it affected any right that existed before the amendment. A statute, could not be construed retrospectively if it had the effect of making a contract valid, which as the law stood at the time it was executed it was not valid. If the amending statute had the effect of altering a substantive law, or removing a substantive right, it should not be construed retrospectively.

The Federal Court, in *Lee Chow Mena v. Public Prosecutor* [1978] 2 MLJ 36 applied the same principles as stated above and 'decided that an amendment to the Courts of Judicature Act

1964 which gave a person a right of appeal to the Federal Court when such right did not exist before the amendment, must not be construed retrospectively. In delivering the judgment of the Court, Suffian LP, said at page 37:

> Here at the time of the appellant's conviction he had no right of appeal from the appellate High Court to the Federal Court, so there is no question of the amendment to the Courts of Judicature Act intefering with this right of appeal then existing. The amendment confers a right of further appeal to the Federal Court on a person convicted by a Special President. This amendment deals not with a mere matter of procedure, but confers a substantive right. Prima facie it has prospective effect only unless there is a clear indication to the contrary. In our judgment there is no such indication here. It follows therefore that a person convicted by a Special President before the amendment who has lost an appeal to the High Court has no right of further appeal to this Court.

The case cited by Mr. Fransic Lim is in respect of an amendment to the Rules of the Supreme Court of Queensland. The Court held that the amendment, which was purely procedural and did not affect the right of the plaintiff to prosecute his claim, must be construed retrospectively.

It is now necessary to consider s. 30 of the Interpretation Act. The section states:

> 30. (1) The repeal of a written law in whole or in part shall not -
>
> (a) affect the previous operation of the repealed law or anything duly done or suffered thereunder: or
> (b) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed law; or
> (c) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed law; or
> (d) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,
>
> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been made.

As stated earlier, s. 20(1)(c) and (e) of the Interpretation Acts of Queensland is similar to our s. 30(1)(b)and (d). In *Yrttiaho v. The Public Curator of Queensland,* Gibbs J. said at page 245:

> However, in my opinion, the appellant had no right within s. 20(1)(c) because that paragraph on its proper construction does not refer to rights of a procedural kind, pending proceeding. I do not, of course, deny that the expression "right", standing alone, would include a right belonging to the area of procedure. However, legal proceedings and remedies are dealt with in s. 20(1) by par.(e) and by the words which follow it, which provide that *prima facie* an amendment shall not affect any investigation, legal proceeding or remedy in respect of an accrued right and which go on to provide for the institution, continuance or enforcement of any such investigation, legal proceeding or remedy as if the amending Act had not been passed. The express mention in these provisions of legal proceedings and remedies, and the contrast with the earlier paragraph which relates to rights, make it clear to my mind that par.(c) is not concerned with matters of procedure, but only with rights of a substantive kind.

The learned Judge then held that s. 20(1)(c) and (e) did not apply to that case.

It will be noted that our s. 30 uses the words "repeal of a written law." Under s. 3 of the Act the word "repeal" is defined to include rescind, revoke, cancel, and replace. It has been decided by the High Court in Penang that the word "amends" includes "repeals". See *Public Prosecutor v. Hun Peng Kai & Ors.* [1984] 2 CLJ 290 @ 294. Section 3 of the Interpretation Act defines "written law" to include subsidiary legislation. And "subsidiary legislation" means any proclamation, rule regulation, order, made under an Act of Parliament. The amendment to Order 32 was made by the Rules Committee under s. 17 of the Courts of Judicature Act 1964 with the consent of the Chief Justices of Malaya and Borneo. It follows that the amendment falls within the definition of "the repeal of a written law" in s. 30(1).

If the reasoning in *Yrttiaho v. The Public Curator of Oueensland,* is followed, s. 30(1)(b) and (d) does not apply to the present case. The Court will then have to apply the common law principle.

According to **Halsbury's Laws of English,** 4th Ed.,Vol.44 page 574, where an amendment is concerned merely with matters of procedure it

is to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament. However, such amendment does not apply retrospectively if the effect is to deprive a person of a vested right such as the right of a plaintiff to continue an action. See also *Public Prosecutor v. Datuk Haji Harun bin Haji Idris* [1977] 1 MLJ 14.

In my opinion the Court may rely on the decision in *Yrttiaho v. The Public Curator of Queensland*.

Miss. B. Oleary submitted that if the amendment applied retrospectively the plaintiff could not proceed fully with its Order 14 application. She said that the amendment violated the vested right of the plaintiff.

In the present case, the application for summary judgment was filed on 24 April 1992. The application is supported by an affidavit filed on the same day. The plaintiff filed a second affidavit on 7 September 1992, and a third affidavit on 13 November 1992. The plaintiff then filed the fourth affidavit (Enclosure 16) on 8 September 1993, that is, about 10 months after the third affidavit was filed and about five weeks after the amendment came into force. Enclosure 17 was filed by the defendants on 15 September 1993. In my opinion the amendment does not affect any vested right of the plaintiff. The plaintiff's right to prosecute its claim against the defendants for the amount stated in the statement of claim is not affected. The plaintiff's right to apply for summary judgment against the defendants is also not affected. The amendment is purely procedural in nature and there is no indication that it is not intended to apply retrospectively. The cases cited by Miss. Oleary, except *Singer v. Hasson* do not therefore apply to the present case.

If I am wrong in relying on the decision in Y*rttiaho v. The Public Curator of Oueensland*, and assuming that s. 30(1)(b) and (d) applies to the present case, the question to be considered is (1) whether the amendment affects any right privilege or liability acquired or accrued before the amendment; or (2) whether the amendment affects legal proceeding or remedy in respect of such right etc. In my opinion in the present case the amendment does not affect any right, privilege or liability acquired or accrued before the amendment. Further the amendment does not affect the present legal proceeding instituted by the plaintiff because it does not affect any such right of the plaintiff.

Since the right of the plaintiff in respect of the present proceeding is not affected by the amendment under s. 30(1), such proceeding cannot continue as if the amendment had not been made. In the circumstances, the Court has to fall back on the common law principle as stated earlier.

On the question of abridgement of time under O. 3 r. 5, any party may file an application for the Court to consider.

For the reasons stated above, I rule that the amendment to O. 32 r. 13 of the Rules of the High Court 1980, applies retrospectively. Enclosures (16) and (17) cannot therefore be considered for the purpose of the present application.